

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF MINNEHAHA )

IN CIRCUIT COURT  
SECOND JUDICIAL CIRCUIT

NORTHERN TRUCK EQUIPMENT CO.,

CIV. 13-

Plaintiff,

vs.

OMAHA STANDARD, LLC, a.k.a. OMAHA  
STANDARD PALFINGER, a.k.a. EAGLE  
LIFT PALFINGER,

SUMMONS

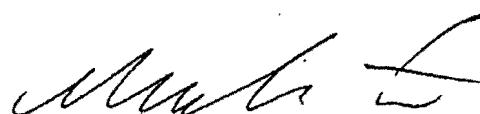
Defendant.

THE STATE OF SOUTH DAKOTA TO THE ABOVE-NAMED DEFENDANT, GREETINGS:

You are hereby summoned and required to answer the Complaint of the Plaintiff in the above entitled action, a copy of which said Complaint is hereunto annexed and herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, Davenport, Evans, Hurwitz & Smith, L.L.P., at their office at P.O. Box 1030, 206 West 14<sup>th</sup> Street, in the City of Sioux Falls, Minnehaha County, South Dakota, within thirty (30) days after the service of this Summons upon you, exclusive of the day of such service, and you, and each of you, will hereby take notice that in case of your failure to answer said Complaint, judgment by default may be rendered against you as requested in the said Complaint.

Dated at Sioux Falls, South Dakota, this 23rd day of July, 2013.

DAVENPORT, EVANS, HURWITZ &  
SMITH, L.L.P.



Mitchell A. Peterson  
Elizabeth S. Hertz  
206 West 14<sup>th</sup> Street  
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Facsimile: (605) 335-3639  
*Attorneys for Plaintiff*

STATE OF SOUTH DAKOTA )  
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Plaintiff,

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OMAHA STANDARD, LLC, a.k.a. OMAHA  
STANDARD PALFINGER, a.k.a. EAGLE  
LIFT PALFINGER,

COMPLAINT

Defendant.

Plaintiff Northern Truck Equipment Co. ("Northern") states the following as its  
complaint against Defendant Omaha Standard, LLC a/ka Omaha Standard Palfinger a/k/a Eagle  
Lift Palfinger ("Omaha Standard"):

**GENERAL ALLEGATIONS**

1. Northern is a South Dakota corporation that sells truck and trailer equipment at  
retail locations in South and North Dakota.
2. Omaha Standard is a corporation that manufactures truck bodies and truck  
equipment.
3. Northern was a dealer and franchisee for Omaha Standard, and has sold truck  
bodies and truck equipment manufactured by Omaha Standard since 1986.
4. While there was not a specific dealer or franchise agreement between Omaha  
Standard and Northern, the parties operated according to oral agreements and a general course of  
dealing.

5. In reliance on its status as a dealer for Omaha Standard, Northern invested in marketing Omaha Standard products. Northern committed to selling and promoting Omaha Standard products instead of similar products from other manufacturers, and terminated its relationship with other manufacturers in reliance on the relationship with Omaha Standard. Northern has trained its sales force to sell Omaha Standard products, associated its good will with Omaha Standard products, and used its best efforts to make sales. Northern has maintained an inventory of Omaha Standard products and was left with products in stock at the time of the termination.

6. On March 12, 2013, Omaha Standard sent a letter terminating its relationship with Northern. This termination was without just provocation.

**COUNT 1: UNFAIR CANCELLATION UNDER SDCL § 37-5-3**

7. Northern incorporates by reference all allegations contained in this Complaint.

8. Omaha Standard's termination of Northern's franchise was unfair, without regard to the equities, and without just provocation or cause in violation of SDCL § 37-5-3.

9. As a direct and proximate result of Omaha Standard's violation of SDCL § 37-5-3, Northern has suffered damages in an amount to be proven at trial, including lost profits, goodwill, reputation, its investment in training and educating personnel to sell, promote, and service Omaha Standard products, and its investment in creating a market for Omaha Standard products.

**COUNT 2: BREACH OF CONTRACT**

10. Northern incorporates by reference all allegations contained in this Complaint.

11. Northern and Omaha Standard had an oral contract for Northern to act as an authorized distributor of Omaha Standard products.

12. Northern performed all its duties under the agreement.
13. Omaha Standard breached the agreement by terminating Northern unfairly and without just provocation.
14. As a direct and proximate result of Omaha Standard's breach, Northern has suffered damages in an amount to be proven at trial, including lost profits, goodwill, reputation, its investment in training and educating personnel to sell, promote, and service Omaha Standard products, and its investment in creating a market for Omaha Standard products.

**COUNT 3: UNJUST ENRICHMENT**

15. Northern incorporates by reference all allegations contained in this Complaint.
16. Northern has expended money, time, labor, and resources creating a market for Omaha Standard products.
17. Northern's efforts and expenditures in creating a market for Omaha Standard products have benefitted and enriched Omaha Standard.
18. Northern has conferred a benefit upon Omaha Standard, and Omaha Standard has accepted that benefit. It would be inequitable for Omaha Standard to receive the benefit without paying Northern for it.
19. Northern is entitled to compensation from Omaha Standard for all benefits conferred upon it by Northern.
20. Northern is entitled to compensation for the money, time, labor, lost business opportunity and resources it has spent creating a market for Omaha Standard products.

**COUNT 4: PUNITIVE DAMAGES**

21. Northern incorporates by reference all allegations contained in this Complaint.

22. Omaha Standard's statutory violations and other wrongful acts, as detailed above, were done maliciously, fraudulently, willfully and intentionally, and/or with such reckless disregard and indifference for the consequences to Northern.

23. Under SDCL § 21-3-2, Northern is entitled to punitive damages to punish Omaha Standard for its wrongful conduct.

WHEREFORE, Northern prays for the following relief:

- A. For an award of compensatory damages in an amount to be proven at trial, which will fairly and justly compensate Northern for its damages;
- B. For an award of punitive damages;
- C. For recovery of Plaintiffs' costs, disbursements, expenses, and reasonable attorney's fees;
- D. For prejudgment interest; and
- E. For other relief that the Court finds just.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues of fact.

Dated at Sioux Falls, South Dakota, this 23rd day of July, 2013.

DAVENPORT, EVANS, HURWITZ &  
SMITH, L.L.P.



Mitchell A. Peterson  
Elizabeth S. Hertz  
206 West 14<sup>th</sup> Street  
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Facsimile: (605) 335-3639  
*Attorneys for Plaintiff*



CT Corporation

**Service of Process  
Transmittal**  
07/26/2013  
CT Log Number 523191350

**TO:** Deborah Kalstek  
Hodgson Russ LLP  
Guaranty Building, 140 Pearl Street  
Suite 100  
Buffalo, NY 14202-4040

**RE:** **Process Served in Iowa**

**FOR:** Omaha Standard, LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Northern Truck Equipment Co., Pltf. vs. Omaha Standard, LLC, etc., Dft.

**DOCUMENT(S) SERVED:** Summons, Complaint

**COURT/AGENCY:** County of Minnehaha Second Judicial Circuit Court, SD  
Case # None Specified

**NATURE OF ACTION:** Breach of Contract - Defendant breached the agreement by terminating Northern  
unfairly and without just provocation

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Des Moines, IA

**DATE AND HOUR OF SERVICE:** By Process Server on 07/26/2013 at 13:55

**JURISDICTION SERVED :** Iowa

**APPEARANCE OR ANSWER DUE:** Within 30 days after service exclusive of the date of service

**ATTORNEY(S) / SENDER(S):** Mitchell A. Peterson  
Davenport Evans Hurwitz Smith, L.L.P  
206 West 14th Street  
Sioux Falls, SD 571011030  
605-336-2880

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 796330434039

**SIGNED:** C T Corporation System  
**PER:** Amy McLaren  
**ADDRESS:** 500 East Court Avenue  
Des Moines, IA 50309  
**TELEPHONE:** 800-592-9023